

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

§
ADVANCEME, INC.,

§ Plaintiff,

§ v.

§ AMERIMERCHANT, LLC and
§ FIRST FUNDS, LLC,

§ Defendants.

§ CIVIL CASE NO. 6:06-CV-082 LED-JDL

§ JURY TRIAL DEMANDED

DECLARATION OF MICHAEL N. EDELMAN
IN SUPPORT OF PLAINTIFF ADVANCEME, INC.'S MOTION FOR SANCTIONS
AGAINST DEFENDANT FIRST FUNDS, LLC

I, Michael N. Edelman, declare as follows:

1. I am of counsel with the law firm of Paul, Hastings, Janofsky & Walker LLP, counsel for plaintiff AdvanceMe, Inc. ("AdvanceMe") in the above-referenced matter. I have personal knowledge of the following facts and, if called upon to do so, could and would testify competently thereto.

2. Attached hereto as Exhibit A are true and correct copies of excerpts from the transcript of the hearing on June 27, 2007 before the Honorable Magistrate Judge John D. Love.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated July 3, 2007 from James V. Fazio, III, to Joseph D. Gray.

4. Attached hereto as Exhibit C is a true and correct copy of a letter dated July 25, 2007 from Shanée Y. Williams to Joseph D. Gray.

5. Attached hereto as Exhibit D is a true and correct copy of an email dated July 25, 2007 which I sent to Joseph Gray.

6. Attached hereto as Exhibit E is a true and correct copy of an email dated July 26, 2007 from Joseph Gray to me.

7. Attached hereto as Exhibit F is a true and correct copy of a letter dated August 3, 2007 from Graham E. Sutliff to Shanée Y. Williams.

8. Attached hereto as Exhibit G is a true and correct copy of a letter dated August 3, 2007 from Shanée Y. Williams to Willem G. Schuurman, Joseph D. Gray and Graham E. Sutliff.

9. Attached hereto as Exhibit H is a true and correct copy of a string of emails dated August 3, 2007.

10. On August 3, 2007, I further discussed First Funds' production of documents with Mr. Sutliff. During this conversation, I explained that First Funds' proposed "inspection"

11. was a clear violation of the July 2 Order. To clarify the situation, I asked Mr. Sutliff how many different filing cabinets were involved and to provide an estimate of how many documents were contained within the cabinets. Mr. Sutliff said that he did not know. I further asked whether, in fact, all the documents contained within the cabinets were responsive or only a percentage of them were responsive. Mr. Sutliff again responded that he did not know. I then asked whether the cabinets being made available for inspection were the very same cabinets AdvanceMe had already traveled to New York to inspect in November of 2006. Mr. Sutliff responded that, since he was not involved in the case in November of 2006, he did not know.

12. During my conversation with Mr. Sutliff, I further stated that First Funds was not permitted to avoid its obligation to review, collect, and produce responsive documents by simply opening its doors so that AdvanceMe would have to spend weeks or months in New York digging through filing cabinets. I also stated that the July 2 Order required production of responsive documents. Mr. Sutliff responded that First Funds would not agree to produce any documents unless AdvanceMe paid the copying costs. Mr. Sutliff further stated that First Funds would provide an estimate of the number of documents and the copying costs by Monday, August 5.

13. Attached hereto as Exhibit I is a true and correct copy of an email dated August 6, 2007 from Graham Sutliff to me.

14. Attached hereto as Exhibit J is a true and correct copy of an email dated August 7, 2007 from Graham Sutliff to me.

15. Attached hereto as Exhibit K is a true and correct copy of a letter dated August 9, 2007 from Deborah Race to Douglas McSwane.

16. Attached hereto as Exhibit L is a true and correct copy of a letter dated August 10, 2007 from Graham E. Sutliff to me.

I declare the foregoing to be true and correct. Executed this 10th day of August, 2007, at Palo Alto, California.

/s/ Michael N. Edelman

Michael N. Edelman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

By: /s/ Michael N. Edelman

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